In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.231 of 2007

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Date of decision:13.3.2007

Balwinder Kumar

.....Petitioner

v.

State of Punjab

.....Respondent

....

Present: Mr. Sandeep Arora, Advocate for the petitioner.

Mr. Gurinder S. Bhandari, Deputy Advocate General, Punjab for the respondent-State.

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S.S. Saron, J.

With the consent of the learned counsel for the parties the revision petition is taken up for final disposal.

This revision petition has been filed by the petitioner Balwinder Kumar against the judgment and order dated 13.1.2007 passed by the learned Sessions Judge, Kapurthala where the appeal filed by him against the judgment and order dated 25.10.2006 passed by the learned Sub Divisional Judicial Magistrate, Phagwara has been dismissed.

Smt. Raj Anil Singh, wife of Gurinderjit Singh made a statement to the effect that she had come to her office on 25.6.2004 as usual

and had parked her Indica car outside her office. At about 2.00 p.m. when she came out of her office, she found her car missing. All efforts to trace the car turned futile. On the basis of her statement case for the offences under Sections 379 and 411 of the Indian Penal Code (IPC' – for short) was registered. Thereafter, ASI Sat Pal along with other Police officials during barricade apprehended the Indica car that had been stolen. The stolen car was identified by the complainant Smt. Raj Anil Singh and her husband. The car was being driven by the petitioner Balwinder Kumar. It was taken into possession and Balwinder Kumar was arrested. After completion of the investigation challan in the case was filed. The prosecution in order to prove its case examined four witnesses. The statement of the petitioner in terms of Section 313 of the Code of Criminal Procedure was recorded. It was stated by him that he was running business of travel agency and he had been sent to get the money from certain persons. Those persons had told the complainant that they had made full payment to the petitioner but, in fact, they had not made the full payment. The complainant in order to teach the petitioner a lesson got the false case registered. The learned trial Court after considering the evidence and material on record vide her judgment and order dated 25.10.2006 found the petitioner guilty of the offence and accordingly sentenced him to six months imprisonment and to pay a fine of Rs.500/- for the offence under Section 411 IPC. The period of imprisonment already undergone by the petitioner was ordered to be set off against his substantive sentence. The appeal filed by the petitioner has been dismissed by the learned Sessions Judge Kapurthala as no merit was found in the same. Aggrieved against the said orders the petitioner has

approached this Court.

Learned counsel for the petitioner after arguing the case on merit and feeling that no ground is made out for seeking acquittal of the petitioner has submitted that in the facts and circumstances of the case and also the fact that the petitioner is the first offender he be shown leniency in the matter of sentence. It is submitted that the sentence of imprisonment of six months is too harsh and that the same is liable to be reduced to that already undergone. The petitioner, it is stated, has undergone about two months and one week of sentence.

In response, learned counsel appearing for the State has submitted that the sentence of imprisonment that has been imposed is just and adequate and calls for no reduction. It is submitted that the petitioner has rightly been sentenced which in the circumstances of the case is adequate.

I have given my thoughtful consideration to the contentions of the learned counsel appearing for the parties. It has not been shown that the petitioner has earlier been involved also in some cases and the present is the first case in which he has been sentenced and convicted. The petitioner though was challaned for the offences under Sections 379 and 411 IPC, however, he has been charged and convicted for the offence under Section 411 IPC only. It has been specifically stated that the petitioner is a first offender and no other case is registered or pending against him. Keeping in view the gravity of the offence I feel that it is not a case where the relief of probation is made out. However, it would be just and expedient in the facts and circumstances of the case to reduce the sentence of imprisonment to

three months from six months. The period of sentence that has already been undergone would be set off against the substantive sentence.

With the modification in the sentence the criminal revision stands disposed of.

March 13, 2007. **(S.S. Saron)**
Judge

hsp